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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Regulatory Reform for Local)
Exchange Carriers Subject to)
Rate of Return Regulation)

Docket No. 92-135 /

AT&T PETITION FOR CLARIFICATION OR,
ALTERNATIVELY, RECONSIDERATION

Pursuant to sections 1.101 et seq of the Commission rules, 47 C.F.R. 1.101 et seq, American Telephone and Telegraph Company ("AT&T") hereby requests clarification or, alternatively, reconsideration of certain aspects of the Order released in this proceeding on June 11, 1993.¹ The Order adopts new rules to implement regulatory reform for small and mid-size LECs that remain subject to rate of return regulation.

As explained below, certain portions of the rules reflect unexplained deviations from the Commission's original proposals, are inconsistent with the Commission's statements in the Order, and/or lack any support in the record. Because these changes disserve the Commission's objective of increasing efficiency incentives for smaller

¹ Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation, Report and Order, CC Docket No. 92-135, FCC No. 93-253, released June 11, 1993 ("Order").

exchange carriers, the Commission should clarify or reconsider these regulations.

The Order creates three types of regulatory reforms for small and mid-size LECs: (1) an optional incentive plan permitting carriers to establish rates based on their historical costs; (2) a rule to allow LECs serving 50,000 or fewer access lines to file annual common lines rates based on historical cost; and (3) a change that permits carriers which have not elected to participate in the incentive plan or the small company rules described above to file tariffs every two years. The Order states (§ 5) that these new rules "are largely as proposed in the NPRM with changes as supported by the record."² AT&T generally supports the Commission's decision; however, as explained below, in a few key respects the regulations adopted in the Order must be either clarified or reconsidered. This is necessary because the rules diverge markedly from the NPRM's proposals, or have not been

² In the Matter of Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation, 7 FCC Rcd 5023 (1992); 7 FCC Rcd 5501 (1992) (erratum) ("NPRM"). AT&T filed both comments and reply comments in response to the NPRM, in which AT&T generally supported those proposals because they encourage small and mid-size LECs to reduce costs and increase the efficiency of their access operations, and to pass on a portion of that efficiency to their access customers in the form of lower rates.

adequately explained or justified on the basis of the record.

A. BASE PERIOD FOR TARIFF FILINGS

The NPRM proposed (§ 13) that companies participating in the incentive plan "would base their first tariff filing on a cost of service study for the most recent 12 month period with related demand data for the same period." Subsequent filings would rely on "similar cost and demand information for all elements for the period since the carrier's last filing" (id.). Thus, under this proposal only the initial filing would rely on a twelve month base period. Subsequent filings would rely on a twenty-four month base period.

Several commentors, including AT&T, supported this proposal, and no objections to the use of a twenty-four month base were filed by any party. Nonetheless, the Order (§ 43) inexplicably alters the proposed procedure for subsequent filings, providing that subsequent filings will also be based on the most recent 12-month period. No basis is provided for the Commissions apparent rejection of its own proposal. However, in the regulations promulgated pursuant to the Order, the Commission appears to have adopted a base period which is inconsistent with that

discussed in the Order although generally consistent with the Commission's earlier proposal:

Base period. For carriers subject to sections 61.41-49, the 12-month period ending six months prior to the effective date of the annual price cap tariffs, or for carriers regulated under 61.50, the 24-month period ending six months prior to the effective date of the biennial optional incentive plan tariffs.³

The Commission should clarify that the amended section 61.3(e), rather than its statements in the Order, accurately reflects its intention with respect to the base period to be used for subsequent filings.

If, however, the Commission actually intended to allow use of a 12-month base period for subsequent filings it should reconsider that decision. Using the most recent 12-month period as the base for subsequent filings effectively eliminates the self-correcting nature of historical cost-based tariffs and provides an opportunity for LECs to "game" the system. This could happen because LECs using the optional incentive plan could selectively shift costs, revenues, and productivity gains in and out of the 12-month tariff period that will serve as the next tariff period's base period; an event which will not occur if the Commission uses a twenty-four month base period.

³ Order, Appendix B.

B. CARRIER COMMON LINE ("CCL") RATES

AT&T likewise supported the NPRM's proposal (§§ 33-34) that the CCL rates for LECs who utilize the optional incentive plan be based on the historical CCL base period usage increased by the percentage growth in CCL usage over the historical base period. As the NPRM (§ 34) explained, under this procedure "[t]o derive demand, the company would determine the average CCL usage and the percentage growth in usage over the most recent 24-month period". Because this CCL method "correctly captures prospective demand growth by tying it to actual, historical growth rates rather than speculative projections" (Order, § 58), the LEC has incentives to reduce costs and stimulate demand growth.

The Commission (Order, § 60) adopted a CCL formula "that uses the historical growth in common line minutes of use, divided by two to compute [CCL] rates." The CCL demand for the prospective two-year tariff period "would [then] be determined by a simple extrapolation of [historical] base period demand increased by base period percent growth" (id., § 57).

Despite this statement, the regulation actually adopted in the Order (i.e., the new Section 61.50 (k) (2) of the Commission's rules) contains a different method of calculation. It provides that the CCL demand growth should be calculated solely on the most recent 12-month period.⁴ This is contrary to the Commission's stated reasoning in both the NPRM (§§ 28-34) and the Order (§§ 57-60), and should be clarified and revised.

To the extent that revised rule 61.50 (k) (2) accurately reflects the intention of the Commission to rely solely on 12-month period demand that decision should be reconsidered. There is no factual basis in the record for the Commission's departure from its initial proposal. Moreover because this rule fails to account for demand growth that may occur between the last 12 months of a base period and the first 12 months of a subsequent base period it will fail to accurately reflect CCL demand growth and will conflict with the Commission's goal to provide ratepayers with a pass through of efficiency gains experienced by the LEC.

C. PRICING FLEXIBILITY

The Commission concluded that a degree of pricing flexibility "to respond to competitive pressures" may be

⁴ Id.

appropriate for LECs that operate under the optional incentive plan which it was adopting.⁵ However, the Order (§ 36) does not "mandate use of an index to track carrier prices," despite the fact that it adopts the same structure of "baskets" and "service categories" previously used in price cap regulation. Instead, the Order provides (id.) that prices will be permitted to fluctuate "by a maximum of 10 percent" during the two years between rate filings. The Commission provided no guidance as to how these price changes would be tracked, stating that this issue "will be determined in the tariff process" (id.).

It is essential that the Commission clarify this aspect of its Order. As presently written, section 61.50 (h) (2) which deals with the pricing flexibility to be given to the LECs, could be interpreted to permit a LEC to set prices over the two-year period of the tariff to recover 110% of its costs, including rate of return. Such a nonsensical result clearly was not intended by the Commission. Optional incentive LECs cannot be permitted to

⁵ The Order (§ 70) provides that carriers electing to participate in the optional incentive plan must remain in the plan for four years, or two tariff periods. Additionally, two years notice must be given by carriers prior to exiting the plan (id.) Section 61.50(d) of the Commission's Rules, adopted in the Order, omits the foregoing notice requirement. AT&T seeks clarification of that section to provide for the requisite notice to the Commission before they exit the optional incentive rate plan.

use "pricing flexibility" as a justification for raising aggregate basket rates above the level determined by their biennial targeting to historical costs at authorized rate-of-return. Consequently, the rules adopted in the Order should be rewritten and clarified. The rule should state that service category pricing flexibility shall be no more than a 10 percent difference, and that aggregate basket rates may not rise above the level set at their previous biennial filing.⁶ To the extent that revised rule Section 61.50 (h) (2) accurately reflects the intention of the Commission, it must be reconsidered because it would permit LECs to set rates to earn at a level above their authorized rate-of-returns in apparent violation of Section 201(b) of the Communication's Act.

⁶ In addition, the mechanism for measuring an optional incentive LEC's use of pricing flexibility needs to be clarified. The Order (¶ 36) states that there will not be an index to track carrier prices. Yet, there must be a numerical mechanism within the optional incentive rate structure to ensure that price changes during the tariff period are neutral or negative for the overall basket revenues, and to ensure that service category rate changes are within the 10 percent differential restriction for the tariff period.

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CONCLUSION

For all the foregoing reasons, AT&T requests the Commission to clarify, or alternatively, reconsider the rules regarding base periods, CCL, pricing flexibility, and OIR requirements set forth in the Order in this proceeding.

Respectfully submitted,

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Dated: August 4, 1993

CERTIFICATE OF SERVICE

I, Janice Knapp, hereby certify that a true copy of the foregoing "AT&T Petition For Clarification Or, Alternatively, Reconsideration" was served this 4th day of August, 1993 by first-class mail, postage prepaid, upon the parties on the attached service list.

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